

the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Administration. Failure of the overpaid individual or his estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 410.570 Underpayments.

(a) *General.* As used in this subpart, the term *underpayment* includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits are payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment is due is living, the amount of such underpayment will be paid to such individual either in a single payment (if he is not entitled to a monthly benefit) or by increasing one or more monthly benefit payments to which such individual is or becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment is due dies before receiving payment or negotiating a check or checks representing such payment, such underpayment will be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household (as defined in § 410.393) with the deceased individual at the time of such individual's death, or

(ii) In the case of a deceased miner, entitled for the month of death to widow's black lung benefits.

(2) In the case of a deceased miner or widow, his or her child entitled to benefits as the surviving child of such miner or widow for the month in which such miner or widow died (if more than one such child, in equal shares to each such child). As used in this subparagraph, "entitled to benefits as a surviving child" refers to the benefit described in § 410.212, and not to the payment described in § 410.510(c).

(3) In the case of a deceased miner, his parent entitled to benefits as the

surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) *Person qualified to receive underpayment dies before receiving payment.* In the event that a person who is otherwise qualified to receive an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order of priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term *legal representative*, for the purpose of qualifying to receive an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution, or organization acting on behalf of an unadministered estate: *Provided*, The person can give the Administration good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Administration good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who, under the laws and customs of that country, has the right to receive assets of the estate; or

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(3) A public administrator; or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of good acquittance.* A person is considered to give the Administration *good acquittance* when payment to that person will release the Administration from further liability for such payment.

[36 FR 23758, Dec. 14, 1971, as amended at 37 FR 20650, Sept. 30, 1972]

§ 410.580 Relation to provisions for reductions or increases.

The amount of an overpayment or underpayment is the difference between the amount actually paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such overpayment or underpayment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 412(b) of the Act, as increased pursuant to section 412(a)(1), or as augmented under section 412(a)(3), of the Act. In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so reduced. Overpayments and underpayments simultaneously outstanding on account of the same beneficiary are first adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 410.581 Payments on behalf of an individual.

When it appears to the Administration that the interest of a beneficiary entitled to a payment under part B of title IV of the Act would be served thereby, certification of payment may be made by the Administration, regardless of the legal competency or incompetency of the beneficiary entitled thereto, either for direct payment to such beneficiary, or for his use and benefit to a relative or some other person as the "representative payee" of the beneficiary. When it appears that an individual who is receiving benefit payments may be incapable of man-

aging such payments in his own interest, the Administration shall, if such individual is age 18 or over and has not been adjudged legally incompetent, continue payments to such individual pending a determination as to his capacity to manage benefit payments and the selection of a representative payee. As used in §§ 410.581 through 410.590, the term *beneficiary* includes the dependent of a miner or widow who could qualify for certification of separate payment of an augmentation portion of such miner's or widow's benefits (see §§ 410.510(c) and 410.511).

[37 FR 20650, Sept. 30, 1972]

§ 410.582 Submission of evidence by representative payee.

Before any amount shall be certified for payment to any relative or other person as representative payee for and on behalf of a beneficiary, such relative or other person shall submit to the Administration such evidence as it may require of his relationship to, or his responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his authority to receive such payment. The Administration may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If any such relative or other person fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Administration, and the required evidence is thereafter submitted.

[37 FR 20650, Sept. 30, 1972]

§ 410.583 Responsibility of representative payee.

A relative or other person to whom certification of payment is made on behalf of a beneficiary as representative payee shall, subject to review by the Administration and to such requirements as it may from time to time prescribe, apply the payments certified to him on behalf of a beneficiary only for the use and benefit of such beneficiary